

# Fair Labor Standards Act



- ➡ It's Not a Choice;
- ➡ It's the Law!!
- ➡ All employees are covered, classified or non-classified, temporary or permanent.

# Specific Topics



- Overtime pay and Regular Hourly Rate
- Shift differential
- On-call
- Call-back
- Compensatory Time
- Fixed vs. Flex Work Schedule
- Secondary employment

# Overtime Pay



- The FLSA requires covered employers to pay their non-exempt employees overtime compensation for all hours worked in excess of 40 per week.
- Overtime must be paid at a rate of one and one-half times the employee's "regular rate" of pay. That is the hourly rate actually paid for a normal work week (i.e., non-overtime work week.)

# Regular Hourly Rate




- Regular rate includes all “remuneration” employees receive for working for the state, e.g., base wage, premium pay such as shift differential and on-call pay, non-discretionary incentive pay, free housing, etc.
- Total all “remuneration” in a work week and divide it by the number of hours worked to become the regular rate for overtime compensation

# Shift Differential




- An additional pay beyond base pay for working shifts and for employees eligible for shift differential pay
- State pays 7.5% for hours between 4:00p.m. and 11:00 p.m.
- State pays 10.0% for hours between 11:00 p.m. and 6:00 a.m.
- Shift differential pay must be included in the calculation of regular rate for overtime compensation

# Cautions for Shift Differential Assignment



- Shift differential eligibility is designated by GSS and published in the annual compensation plan.
- Request for shift differential eligibility for individual positions must be approved by the Personnel Director.
- State Controller has statutory responsibility to collect overpayment for shift differential payment if employees not eligible for shift payment receive the pay.

# On-call



- A premium pay to employees for the inconvenience in restricting employees' freedom of movement while not on-duty (employees are still free to use the time for personal purposes).
- A "remuneration" paid to employees for providing some "services" to an employer
- On-call pay needs to be included in the regular rate hour calculation for overtime compensation


# Cautions for On-Call



- Permit on-call employees to handle calls over the phone, if possible.
- Provide employees a reasonable period of time within which to respond.
- Allow on-call employees the opportunity to decline a certain number of calls or to swap or trade calls with colleagues.
- Avoid disciplinary/corrective actions for not responding to on-call



# Call-Back



- A base pay rate for no less than two hours when an eligible employee is required to report to work before or after a scheduled shift.
- Employees eligible for both on-call and call-back shall receive call-back pay only. On-call pay stops when employees receive call-back pay.

# Compensatory Time for Non-Exempt Employees



- FLSA allows public employers to provide comp time off in lieu of cash payment.
- Comp time must be paid at a rate of 1.5 hours for each hour of overtime work.
- Compensatory time agreements must be reached for some employees.

# Compensatory Time

## ■ Compensatory time agreement

- hired before 4/15/86 - if comp time practice already existed, no need for agreement
- hired on and after 4/15/86 - need to reach agreement
- new hires - agreement as part of employment condition

## ■ Usage of comp time

- Allow employees to use comp time for personal purposes
- Supervisor has the Authority to schedule when to use comp time

# Workweek Definition (non-exempt)



- Fixed and regularly recurring period of 168 hours - 7 consecutive 24-hour periods.
- To begin on any day of the week and any hour of the day.
- Established workweek is fixed but may be changed if the change is intended to be permanent and not designed to evade FLSA requirements.
- Time recordkeeping is critical for flex schedules.

# Regular Work Schedules : Example

Work week begins midnight Friday to the following midnight Friday

First Week						
SA	SU	M	T	W	TH	F
		8	8	8	8	8
		10	10	10	10	

No overtime accrued

Second Week						
SA	SU	M	T	W	TH	F
		8	8	8	8	8
		10	10	10	10	

No overtime accrued

First Week						
SA	SU	M	T	W	TH	F
		10	10	10	10	10

Second Week						
SA	SU	M	T	W	TH	F
10	10	10				

10 hours overtime accrued during the first week

# Flex Work Schedules : Example

Work week begins NOON Friday to the following NOON Friday

First Week						
SA	SU	M	T	W	TH	F

		9	9	9	9	4/5
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No overtime accrued

Second Week						
SA	SU	M	T	W	TH	F

		9	9	9	8	
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No overtime accrued

First Week						
SA	SU	M	T	W	TH	F

		9	9	9	9	6/3
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Second Week						
SA	SU	M	T	W	TH	F

		9	9	9	8	
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Two hours overtime accrued during the first week

# Secondary Employment (Dual Employment)

- State is one employer.
- Time from both primary and secondary employment must be combined for overtime compensation purposes unless secondary employment (e.g., concerts, sports events, and lectures):
  - is not within the same occupational category as the employee's primary employment, and
  - is sporadic, infrequent, irregular, or occurring in scattered instances, and
  - is done on a voluntary basis.